IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

Crl.MC.No. 280 of 2007()

CRA.322/2000 of ADDL. SESSIONS COURT, (ADHOC) III, THALASSERRY
CC.1173/1995 of JUDL.MAGISTRATE OF FIRST CLASS COURT, MATTANNUR

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PETITIONER: APPELLANT/ACCUSED

K.V.JOY,
S/O.VARGHESE, KANNOTH HOUSE P.O.OLIKKAL,
KANNUR DISTRICT.

BY ADV. SRI.K.SIVAKUMAR

RESPONDENTS: COMPLAINANT & STATE

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1. M.J.TITUS,
S/O.JOHN, ALAMOOTIL HOUSE, IRITTY P.O.
MADATHIL, KANNUR DISTRICT.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 280 of 2007

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Dated this the 7th day of February, 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the N.I. Act. The revisional court had modified the sentence to one of imprisonment till rising of Court. There is a further direction to pay an amount of Rs.45,000/- as compensation and in default to undergo S.I. for a period of 45 days.

2. According to the petitioner, he has already paid the amount of Rs.45,000/- to the complainant. The complainant accepts the same. The petitioner had reported the matter to the learned Magistrate. But the learned Magistrate rejected the prayer for composition and issued non-bailable warrant against the petitioner. It is, in these circumstances, that the petitioner has come to this Court with this petition under Section 482 Cr.P.C. to issue appropriate directions.

3. I have gone through the order passed in revision. It only directs the petitioner "to pay the amount of Rs.45,000/- as compensation". If the petitioner asserts, the complainant endorses

and the court accepts the submission that the compensation amount of Rs.45,000/- had been paid, there can be no question of execution of the default sentence. Substantive sentence of imprisonment till rising of court will have to be served at any rate. The learned Magistrate has become functus officio and hence did not commit any error in not accepting the prayer of the petitioner for composition subsequent to the disposal of the case. If the petitioner appears before the learned Magistrate along with the complainant/his counsel and satisfies the learned Magistrate that the compensation amount has been paid, there can be no question of execution of the default sentence. The position has been made clear in the decision in **Girish** v. **Muthoot Capital Services (P) Ltd.** (2007 (1) KLT 16).

4. This Crl.M.C. is hence dismissed with the above observations.

(R. BASANT)
Judge

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